

FILED

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

May 5, 2005

**U.S. DISTRICT COURT
CLARKSBURG, WV 26301**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No.: 1:05cr50

**TYREF BYSON MCNEAL a/k/a "Beans,"
HERBERT M. STOLTZ a/k/a "Ghost,"
NATHAN JOHN PHILMORE a/k/a "J,"
TIPHANIE DAWN WHITE,
KENNETH LEE BURNS and
WALTER DUANE WHITE,**

Defendants.

Violations: 18 USC §2
18 USC §922(g)(1)
18 USC §924(a)(2)
18 USC §924(c)(1)(A)(i)
21 USC §841(a)(1)
21 USC §841(b)(1)(B)(iii)
21 USC §841(b)(1)(C)
21 USC §846

INDICTMENT

The Grand Jury charges that:

COUNT ONE

From in or about the Summer of 2003, and continuing until the return of this Indictment, within the Northern District of West Virginia, and elsewhere, defendants, **TYREF MCNEAL a/k/a "Beans", HERBERT M. STOLTZ a/k/a "Ghost", NATHAN JOHN PHILMORE a/k/a "J", TIPHANIE DAWN WHITE, KENNETH LEE BURNS and WALTER DUANE WHITE**, did knowingly and wilfully combine, conspire, confederate, agree and have a passive understanding with each other and with other persons known and unknown to the Grand Jury, to commit an offense against the United States to wit; to violate Title 21, United States Code, §841(a)(1). It was the purpose and object of the conspiracy knowingly and intentionally to possess with intent to distribute and to distribute in excess of fifty grams of cocaine base, also known as "crack" a Schedule II narcotic drug controlled substance, designated by Title 21, United States Code, §812(c), Schedule

II(a)(4), and to possess with intent to distribute and to distribute in excess of 100 grams or more of a mixture or substance containing a detectable amount of heroin, a Schedule I drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule I(b)(10); in violation of Title 21, United States Code, §§846, 841(b)(1)(A), and 841(b)(1)(B).

COUNT TWO

On or about December 19, 2004, in Monongalia County, within the Northern District of West Virginia, the defendants, **KENNETH LEE BURNS, WALTER DUANE WHITE, and TYREF BYSON MCNEAL a/k/a "Beans,"** aided and abetted by each other, did unlawfully, knowingly, intentionally and without authority distribute .16 grams of heroin, a Schedule I drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule I(b)(10), to a person known to the Grand Jury; in violation of Title 21, United States Code, §§841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, §2, and *Pinkerton v. United States*, 328 U.S. 640.

COUNT THREE

On or about December 19, 2004, in Monongalia County, within the Northern District of West Virginia, the defendant, **KENNETH LEE BURNS**, did unlawfully, knowingly, intentionally and without authority possess with intent to distribute 4.08 grams of heroin, a Schedule I drug controlled substance as designated by Title 21, United States Code, §812(c), Schedule I(b)(10), and 2.7 grams of cocaine base, also known as “crack,” a Schedule II narcotic controlled substance, as designated by Title 21, United States Code, Section 812(c), Schedule II(a)(4); in violation of Title 21, United States Code, §§841(a)(1) and 841(b)(1)(C).

COUNT FOUR

On or about December 19, 2004, in Monongalia County, within the Northern District of West Virginia, the defendant, **KENNETH LEE BURNS**, did knowingly possess firearms, that is a Cobra, .380 caliber pistol, serial number 0P012609; a Cobra, .380 caliber pistol, serial number 0P012618; a Glock, model 21, 45 caliber, serial number USA1831; and a Taurus, model PT92AR, 9 mm caliber pistol, serial number TWI11844, in furtherance of a drug trafficking crime for which he may be prosecuted in a Court of the United States; to-wit: the offense charged in Count Three of this indictment, the allegations of which are incorporated herein by reference, a felony prosecutable in a Court of the United States under Title 21, United States Code, Section 841(a)(1); in violation of Title 18, United States Code, Section 924(c)(1)(A)(i).

COUNT FIVE

On or about December 19, 2004, in Monongalia County, within the Northern District of West Virginia, the defendant, **KENNETH LEE BURNS**, having been convicted of a crime punishable by imprisonment for a term exceeding one year, that is to say, on or about November 28, 1994, **KENNETH LEE BURNS**, was convicted in the Commonwealth of Pennsylvania, Greene County, Pennsylvania, in Case No. 7, of Burglary, did knowingly possess in and affecting interstate commerce, firearms, that is: a Cobra, .380 caliber pistol, serial number 0P012609; a Glock, model 21, 45 caliber pistol, serial number USA1831; a Cobra, .380 caliber pistol, serial number 0P012618; a Winchester, model 94, 30-30 caliber rifle, serial number 1768534; a Savage, model 110, 30-06 caliber rifle, serial number F067963; a Taurus, model PT92AR, 9 mm caliber pistol, serial number TWI11844; and a Weatherby, model Vanguard, .30-06 caliber rifle, serial number VS112364; all in violation of Title 18, United States Code, §§922(g)(1) and 924(a)(2).

COUNT SIX

In or about December, 2004, in Monongalia County, within the Northern District of West Virginia, the defendant, **WALTER DUANE WHITE**, did unlawfully, knowingly, intentionally and without authority distribute a quantity of heroin, a Schedule I drug controlled substance as designated by Title 21, United States Code, §812(c), Schedule I(b)(10), to a person known to the Grand Jury; in violation of Title 21, United States Code, §§841(a)(1) and 841(b)(1)(C).

COUNT SEVEN

On or about January 20, 2005, in Morgantown, Monongalia County, within the Northern District of West Virginia, the defendant, **TYREF BYSON MCNEAL**, a/k/a **“Beans,”** did unlawfully, knowingly, intentionally and without authority distribute .74 grams of cocaine base, also known as “crack,” a Schedule II narcotic drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule II(a)(4), and .18 grams of heroin, a Schedule I drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule I(b)(10), to a person known to the Grand Jury, in exchange for \$200.00; in violation of Title 21, United States Code, §§841(a)(1) and 841(b)(1)(C).

COUNT EIGHT

On or about January 26, 2005, in Monongalia County, within the Northern District of West Virginia, the defendants, **TYREF BYSON MCNEAL a/k/a "Beans"** and **HERBERT M. STOLTZ a/k/a "Ghost"** aided and abetted by each other, did unlawfully, knowingly, intentionally and without authority distribute a quantity of cocaine base, also known as "crack," a Schedule II narcotic drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule II(a)(4), to a person known to the Grand Jury, in exchange for \$150.00; and distributed a quantity of a mixture or substance containing a detectable amount of heroin, a Schedule I drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule I(b)(10), to a person known to the Grand Jury, in exchange for \$60.00; in violation of Title 21, United States Code, §§841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, §2.

COUNT NINE

On or about January 31, 2005, in Monongalia County, within the Northern District of West Virginia, the defendants, **TYREF BYSON MCNEAL a/k/a "Beans"** and **HERBERT M. STOLTZ a/k/a "Ghost,"** aided and abetted by each other, did unlawfully, knowingly, intentionally and without authority distribute a quantity of cocaine base, also known as "crack," a Schedule II narcotic drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule II(a)(4), to a person known to the Grand Jury, in exchange for \$150.00; in violation of Title 21, United States Code, §§841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, §2.

COUNT TEN

On or about February 3, 2005, in Monongalia County, within the Northern District of West Virginia, the defendants, **TYREF BYSON MCNEAL a/k/a “Beans”, HERBERT M. STOLTZ a/k/a “Ghost” and NATHAN JOHN PHILMORE a/k/a “J,”** aided and abetted by each other, did unlawfully, knowingly, intentionally and without authority distribute approximately .80 grams of cocaine base, also known as “crack,” a Schedule II narcotic drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule II(a)(4), in exchange for \$100.00; and distributed approximately .064 grams of heroin, a Schedule I drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule I(b)(10); in violation of Title 21, United States Code, §§841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, §2.

COUNT ELEVEN

On or about February 3, 2005, in Morgantown, Monongalia County, within the Northern District of West Virginia, the defendant, **TYREF BYSON MCNEAL** a/k/a **“Beans,”** did unlawfully, knowingly, intentionally and without authority possess with intent to distribute 1.1 grams of heroin, a Schedule I drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule I(b)(10); in violation of Title 21, United States Code, §§841(a)(1) and 841(b)(1)(C).

COUNT TWELVE

On or about February 3, 2005, in Morgantown, Monongalia County, within the Northern District of West Virginia, the defendants, **TYREF BYSON MCNEAL a/k/a “Beans”** and **TIPHANIE DAWN WHITE**, aided and abetted by each other, did unlawfully, knowingly, intentionally and without authority possess with intent to distribute approximately 86.4 grams of heroin, a Schedule I drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule I(b)(10), and possessed with intent to distribute approximately 14 grams of cocaine base, also known as “crack, a Schedule II narcotic drug controlled substance, as designated by Title 21, United States Code, §812(c), Schedule II(a)(4); in violation of Title 21, United States Code, §§841(a)(1), 841(b)(1)(B), 841(b)(1)(C) and Title 18, United States Code, §2.

COUNT THIRTEEN

On or about February 3, 2005, in Monongalia County, within the Northern District of West Virginia, the defendants, **TYREF BYSON MCNEAL a/k/a "Beans", and TIPHANIE DAWN WHITE**, aided and abetted by each other, did knowingly possess a firearm, that is a Kel-tec P-11, 9 mm pistol, serial number 27075, in furtherance of a drug trafficking crime for which they may be prosecuted in a Court of the United States; to-wit: the offense charged in Count Twelve of this indictment, the allegations of which are incorporated herein by reference, a felony prosecutable in a Court of the United States under Title 21, United States Code, Section 841(a)(1); in violation of Title 18, United States Code, Section 924(c)(1)(A)(i).

A true bill,

/s/

Grand Jury Foreperson
(Signature on File)

THOMAS E. JOHNSTON
UNITED STATES ATTORNEY